



Reprinted  
March 4, 2014

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# ENGROSSED

## HOUSE BILL No. 1346

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DIGEST OF HB 1346 (Updated March 3, 2014 7:29 pm - DI 102)

**Citations Affected:** IC 22-4; IC 22-4.1.

**Synopsis:** Unemployment insurance. Adds language concerning the public policy involved in the application and payment of  
(Continued next page)

**Effective:** July 1, 2014.

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### Leonard, Morris, Hamm

(SENATE SPONSORS — BOOTS, KRUSE)

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January 15, 2014, read first time and referred to Committee on Employment, Labor and Pensions.

January 21, 2014, reported — Do Pass.

January 27, 2014, read second time, amended, ordered engrossed.

January 28, 2014, engrossed. Read third time, passed. Yeas 65, nays 28.

#### SENATE ACTION

February 10, 2014, read first time and referred to Committee on Pensions and Labor.

February 27, 2014, amended, reported favorably — Do Pass.

March 3, 2014, read second time, amended, ordered engrossed.

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EH 1346—LS 7024/DI 102



unemployment benefits (benefits). Removes any burden of proof from the determination of eligibility for benefits and the determination of gross misconduct. Repeals provisions concerning the process for determining a positive drug test for purposes of an individual's disqualification for benefits. Removes language concerning a department of workforce development's (department) rule or policy regarding an employer's filing of a notice in connection with an individual, group, or mass separation arising from a vacation period. Provides that holiday and vacation pay are deductible income for the week in which the holiday or vacation occurs. Redefines "employer" for purposes of participation in the unemployment insurance system as an employing unit that: (1) has incurred liability for wages payable to one or more individuals; or (2) incurs liability for payment of wages of at least \$1 in any calendar quarter during the current or immediately preceding calendar year. Provides that a benefits overpayment includes any week for which the failure to disclose or falsification of a fact caused benefits to be paid improperly. Provides that, when an individual's most recent separation from employment is a disqualifying separation, the individual must earn remuneration from employment for eight weeks and the remuneration must equal or exceed eight times the weekly benefit amount before the individual again qualifies for benefits. Provides that payment of private unemployment benefits that is conditional upon the signing of a release of employment related claims against the employer is severance pay and is deductible income. Increases from 15 to 30 days the time in which a party has to file an appeal of a review board's decision with the court of appeals. Authorizes the use of money in the special employment and training services fund (fund) for the prevention, detection, and recovery of delinquent contributions and penalties and improper benefit payments. Requires Vincennes University and Ivy Tech Community College to meet performance standards determined by the unemployment insurance board when receiving grants from the fund to provide apprenticeship programs, journeyman upgrade training, and other training and counseling assistance. Provides that the performance standards must provide for the release of 70% of the grant amounts on July 1, based on projections for enrollment, completions, placements, and rates of retention, with the remaining 30% being released throughout the year as the performance criteria are met. Updates references to the high school equivalency diploma program (program). Corrects a reference to the rulemaking body for the program.



Reprinted  
March 4, 2014

Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1346

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A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 22-4-1-2 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2014]: **Sec. 2. (a) Unemployment benefits are paid from state  
4 funds and are not considered paid from any special insurance plan  
5 or by an employer. An application for unemployment benefits is  
6 not considered a claim against an employer, but is considered a  
7 request for unemployment benefits from the unemployment  
8 insurance benefit trust fund.**  
9 **(b) The commissioner is responsible for the proper payment of  
10 unemployment benefits without regard to the level of interest or  
11 participation in any determination or appeal by an applicant or an  
12 employer.**  
13 **(c) An applicant's entitlement to unemployment benefits is  
14 determined based on the information that is available without  
15 regard to a burden of proof. An agreement between an applicant**

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1 and an employer is not binding on the commissioner in  
 2 determining an applicant's entitlement to unemployment benefits.

3 (d) There is no presumption of entitlement or nonentitlement to  
 4 unemployment benefits. There is no equitable or common law  
 5 allowance for or denial of unemployment benefits.

6 SECTION 2. IC 22-4-2-40 IS REPEALED [EFFECTIVE JULY 1,  
 7 2014]. Sec. 40: As used in this article, "drug test" means a test that  
 8 contains at least a five (5) drug panel that tests for the following:

9 (1) Amphetamines;

10 (2) Cocaine;

11 (3) Opiates (2,000 ng/ml);

12 (4) PCP;

13 (5) THC.

14 A drug test described in this section must be performed at a United  
 15 States Department of Health and Human Services certified laboratory;  
 16 with specimen collection performed by a collector certified by the  
 17 United States Department of Transportation and the cost of the drug  
 18 test paid by the employer.

19 SECTION 3. IC 22-4-3-4, AS AMENDED BY P.L.6-2012,  
 20 SECTION 151, IS AMENDED TO READ AS FOLLOWS  
 21 [EFFECTIVE JULY 1, 2014]: Sec. 4. (a) Except as provided in  
 22 subsection (b); An individual is not totally unemployed, part-totally  
 23 unemployed, or partially unemployed for any week in which the  
 24 department finds that the individual:

25 (1) is on a vacation week; and

26 (2) is receiving, or has received, remuneration from the employer  
 27 for that week.

28 (b) Subsection (a) does not apply to an individual whose employer  
 29 fails to comply with a department rule or policy regarding the filing of  
 30 a notice, report, information, or claim in connection with an individual;  
 31 group; or mass separation arising from the vacation period.

32 SECTION 4. IC 22-4-3-5, AS AMENDED BY P.L.6-2012,  
 33 SECTION 152, IS AMENDED TO READ AS FOLLOWS  
 34 [EFFECTIVE JULY 1, 2014]: Sec. 5. (a) Except as provided in  
 35 subsection (c) and Subject to subsection (b), an individual is not totally  
 36 unemployed, part-totally unemployed, or partially unemployed for any  
 37 week in which the department finds the individual:

38 (1) is on a vacation week; and

39 (2) has not received remuneration from the employer for that  
 40 week, because of:

41 (A) a written contract between the employer and the  
 42 employees; or



(B) the employer's regular vacation policy and practice.

(b) Subsection (a) applies only if the department finds that the individual has a reasonable assurance that the individual will have employment available with the employer after the vacation period ends.

~~(c) Subsection (a) does not apply to an individual whose employer fails to comply with a department rule or policy regarding the filing of a notice, report, information, or claim in connection with an individual, group, or mass separation arising from the vacation period.~~

SECTION 5. IC 22-4-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 2. (a) Payments in lieu of a vacation awarded to an employee by an employing unit shall be considered as deductible income in and with respect to the week in which the ~~same~~ **is actually paid: vacation occurs.**

(b) The payment of accrued vacation pay, dismissal pay, or severance pay to an individual separated from employment by an employing unit shall be allocated to the period of time for which such payment is made immediately following the date of separation, and an individual receiving such payments shall not be deemed unemployed with respect to a week during which such allocated deductible income equals or exceeds the weekly benefit amount of ~~his~~ **the individual's** claim.

(c) Pay for:

(1) idle time;

(2) sick pay;

(3) traveling expenses granted to an individual by an employing unit and not fully accounted for by such individual;

(4) earnings from self-employment;

(5) awards by the National Labor Relations Board of additional pay, back pay, or for loss of employment; ~~or~~

(6) ~~any such~~ payments made under an agreement entered into by an employer, a union, and the National Labor Relations Board; ~~and or~~

(7) payments to an employee by an employing unit made pursuant to the terms and provisions of the Fair Labor Standards Act;

shall be deemed to constitute deductible income with respect to the week or weeks for which such payments are made. However, if ~~such~~ payments made ~~pursuant to the provisions of the National Labor Relations Act or of the Fair Labor Standards Act or through agreement with a union under subsection (c)(5)~~ are not, by the terms of the order ~~or agreement~~ under which ~~said the~~ payments are made, allocated to any designated week or weeks, then, and in such cases, such payments shall be considered as deductible income in and with respect to the week in



which the same is actually paid.

(b) (d) Holiday pay which is paid not later than the normal pay day for the pay period in which the holiday occurred shall be deemed to constitute deductible income with respect to the week for in which such payments are made. Holiday pay which is paid after the normal pay day for the pay period in which the holiday occurred shall be considered as deductible income in and with respect to the week in which the same is actually paid: occurs.

(c) (e) Payment of vacation pay if made prior to the vacation period or not later than the normal pay day for the pay period in which the vacation was taken, shall be deemed deductible income with respect to the week or weeks falling within such vacation period for which vacation payment is made. Payment of vacation pay made subsequent to the normal pay day for the pay period in which the vacation was taken shall be deemed deductible income with respect to the week in which such payment is made.

SECTION 6. IC 22-4-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1. Prior to January 1, 1978, "employer" means any employing unit which for some portion of a day, but not necessarily simultaneously, in each of twenty (20) different weeks, whether or not such weeks are or were consecutive within either the current or preceding calendar year, has or had in employment, and/or has incurred liability for wages payable to one (1) or more individuals (irrespective of whether the same individuals are or were employed in each such day); or any employing unit which in any calendar quarter in either the current or preceding calendar year paid for service in employment wages of one thousand five hundred dollars (\$1,500) or more, except as provided in IC 22-4-7-2(h). Subsequent to December 31, 1977,

(a) Before January 1, 2015, "employer" means:

(1) any employing unit which for some portion of a day, but not necessarily simultaneously, in each of twenty (20) different weeks, whether or not such weeks are or were consecutive within either the current or the preceding year, has or had in employment, and/or has incurred liability for wages payable to, one (1) or more individuals (irrespective of whether the same individual or individuals are or were employed in each such day); or

(2) any employing unit which in any calendar quarter in either the current or preceding calendar year paid for service in employment wages of one thousand five hundred dollars (\$1,500) or more, except as provided in IC 22-4-7-2(h), (c), and (i): section 2(e),



2(h), and 2(i) of this chapter.

(b) After December 31, 2014, "employer" means either of the following:

(1) An employing unit that has incurred liability for wages payable to one (1) or more individuals.

(2) An employing unit that in any calendar quarter during the current or preceding calendar year paid for service in employment wages of one dollar (\$1) or more, except as provided in section 2(e), 2(h), and 2(i) of this chapter.

(c) For the purpose of this definition, if any week includes both December 31, and January 1, the days up to January 1 shall be deemed one (1) calendar week and the days beginning January 1 another such week.

(d) For purposes of this section, "employment" shall include services which would constitute employment but for the fact that such services are deemed to be performed entirely within another state pursuant to an election under an arrangement entered into by the board (pursuant to IC 22-4-22) and an agency charged with the administration of any other state or federal unemployment compensation law.

SECTION 7. IC 22-4-13-1.1, AS AMENDED BY P.L.154-2013, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1.1. (a) Notwithstanding any other provisions of this article, if an individual knowingly:

(1) fails to disclose amounts earned during any week in the individual's waiting period, benefit period, or extended benefit period; or

(2) fails to disclose or has falsified any fact;

that would disqualify the individual for benefits, reduce the individual's benefits, or render the individual ineligible for benefits or extended benefits, the individual forfeits any wage credits earned or any benefits or extended benefits that might otherwise be payable to the individual for the period any week in which the failure to disclose or falsification occurs: **caused benefits to be paid improperly.**

(b) In addition to amounts forfeited under subsection (a), an individual is subject to the following civil penalties for each instance in which the individual knowingly fails to disclose or falsifies any fact that if accurately reported to the department would disqualify the individual for benefits, reduce the individual's benefits, or render the individual ineligible for benefits or extended benefits:

(1) For the first instance, an amount equal to twenty-five percent (25%) of the benefit overpayment.

(2) For the second instance, an amount equal to fifty percent



(50%) of the benefit overpayment.

(3) For the third and each subsequent instance, an amount equal to one hundred percent (100%) of the benefit overpayment.

(c) The department's determination under this section constitutes an initial determination under IC 22-4-17-2(a) and is subject to a hearing and review under IC 22-4-17-3 through IC 22-4-17-15.

(d) Interest and civil penalties collected under this chapter shall be deposited as follows:

(1) Fifteen percent (15%) of the amount collected shall be deposited in the unemployment insurance benefit fund established under IC 22-4-26-1.

(2) The remainder of the amount collected shall be deposited in the special employment and training services fund established under IC 22-4-25-1.

SECTION 8. IC 22-4-15-1, AS AMENDED BY P.L.175-2009, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1. (a) ~~With respect to benefit periods established on and after July 6, 1980, an individual who has voluntarily left the individual's most recent employment without good cause in connection with the work or who was discharged from the individual's most recent employment for just cause~~ **Regarding an individual's most recent separation from employment before filing an initial or additional claim for benefits, an individual who voluntarily left the employment without good cause in connection with the work or was discharged from the employment for just cause** is ineligible for waiting period or benefit rights for the week in which the disqualifying separation occurred and until:

(1) ~~the individual has earned remuneration in employment equal to or exceeding the weekly benefit amount of the individual's claim in each of at least eight (8) weeks; and~~

(2) ~~the remuneration earned equals or exceeds the product of the weekly benefit amount multiplied by eight (8).~~

If the qualification amount has not been earned at the expiration of an individual's benefit period, the unearned amount shall be carried forward to an extended benefit period or to the benefit period of a subsequent claim.

(b) When it has been determined that an individual has been separated from employment under disqualifying conditions as outlined in this section, the maximum benefit amount of the individual's current claim, as initially determined, shall be reduced by an amount determined as follows:

(1) For the first separation from employment under disqualifying





conditions, the maximum benefit amount of the individual's current claim is equal to the result of:

(A) the maximum benefit amount of the individual's current claim, as initially determined; multiplied by

(B) seventy-five percent (75%);

rounded (if not already a multiple of one dollar (\$1)) to the next higher dollar.

(2) For the second separation from employment under disqualifying conditions, the maximum benefit amount of the individual's current claim is equal to the result of:

(A) the maximum benefit amount of the individual's current claim determined under subdivision (1); multiplied by

(B) eighty-five percent (85%);

rounded (if not already a multiple of one dollar (\$1)) to the next higher dollar.

(3) For the third and any subsequent separation from employment under disqualifying conditions, the maximum benefit amount of the individual's current claim is equal to the result of:

(A) the maximum benefit amount of the individual's current claim determined under subdivision (2); multiplied by

(B) ninety percent (90%);

rounded (if not already a multiple of one dollar (\$1)) to the next higher dollar.

(c) The disqualifications provided in this section shall be subject to the following modifications:

(1) An individual shall not be subject to disqualification because of separation from the individual's employment if:

(A) the individual left to accept with another employer previously secured permanent full-time work which offered reasonable expectation of continued covered employment and betterment of wages or working conditions and thereafter was employed on said job;

(B) having been simultaneously employed by two (2) employers, the individual leaves one (1) such employer voluntarily without good cause in connection with the work but remains in employment with the second employer with a reasonable expectation of continued employment; or

(C) the individual left to accept recall made by a base period employer.

(2) An individual whose unemployment is the result of medically substantiated physical disability and who is involuntarily unemployed after having made reasonable efforts to maintain the



employment relationship shall not be subject to disqualification under this section for such separation.

(3) An individual who left work to enter the armed forces of the United States shall not be subject to disqualification under this section for such leaving of work.

(4) An individual whose employment is terminated under the compulsory retirement provision of a collective bargaining agreement to which the employer is a party, or under any other plan, system, or program, public or private, providing for compulsory retirement and who is otherwise eligible shall not be deemed to have left the individual's work voluntarily without good cause in connection with the work. However, if such individual subsequently becomes reemployed and thereafter voluntarily leaves work without good cause in connection with the work, the individual shall be deemed ineligible as outlined in this section.

(5) An otherwise eligible individual shall not be denied benefits for any week because the individual is in training approved under Section 236(a)(1) of the Trade Act of 1974, nor shall the individual be denied benefits by reason of leaving work to enter such training, provided the work left is not suitable employment, or because of the application to any week in training of provisions in this law (or any applicable federal unemployment compensation law), relating to availability for work, active search for work, or refusal to accept work. For purposes of this subdivision, the term "suitable employment" means with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment (as defined for purposes of the Trade Act of 1974), and wages for such work at not less than eighty percent (80%) of the individual's average weekly wage as determined for the purposes of the Trade Act of 1974.

(6) An individual is not subject to disqualification because of separation from the individual's employment if:

- (A) the employment was outside the individual's labor market;
- (B) the individual left to accept previously secured full-time work with an employer in the individual's labor market; and
- (C) the individual actually became employed with the employer in the individual's labor market.

(7) An individual who, but for the voluntary separation to move to another labor market to join a spouse who had moved to that labor market, shall not be disqualified for that voluntary



separation, if the individual is otherwise eligible for benefits. Benefits paid to the spouse whose eligibility is established under this subdivision shall not be charged against the employer from whom the spouse voluntarily separated.

(8) An individual shall not be subject to disqualification if the individual voluntarily left employment or was discharged due to circumstances directly caused by domestic or family violence (as defined in IC 31-9-2-42). An individual who may be entitled to benefits based on this modification may apply to the office of the attorney general under IC 5-26.5 to have an address designated by the office of the attorney general to serve as the individual's address for purposes of this article.

As used in this subsection, "labor market" means the area surrounding an individual's permanent residence, outside which the individual cannot reasonably commute on a daily basis. In determining whether an individual can reasonably commute under this subdivision, the department shall consider the nature of the individual's job.

(d) "Discharge for just cause" as used in this section is defined to include but not be limited to:

- (1) separation initiated by an employer for falsification of an employment application to obtain employment through subterfuge;
- (2) knowing violation of a reasonable and uniformly enforced rule of an employer, including a rule regarding attendance;
- (3) if an employer does not have a rule regarding attendance, an individual's unsatisfactory attendance, if the individual cannot show good cause for absences or tardiness;
- (4) damaging the employer's property through willful negligence;
- (5) refusing to obey instructions;
- (6) reporting to work under the influence of alcohol or drugs or consuming alcohol or drugs on employer's premises during working hours;
- (7) conduct endangering safety of self or coworkers;
- (8) incarceration in jail following conviction of a misdemeanor or felony by a court of competent jurisdiction; or
- (9) any breach of duty in connection with work which is reasonably owed an employer by an employee.

(e) To verify that domestic or family violence has occurred, an individual who applies for benefits under subsection (c)(8) shall provide one (1) of the following:

- (1) A report of a law enforcement agency (as defined in IC 10-13-3-10).



1 (2) A protection order issued under IC 34-26-5.

2 (3) A foreign protection order (as defined in IC 34-6-2-48.5).

3 (4) An affidavit from a domestic violence service provider  
4 verifying services provided to the individual by the domestic  
5 violence service provider.

6 SECTION 9. IC 22-4-15-2, AS AMENDED BY P.L.12-2011,  
7 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
8 JULY 1, 2014]: Sec. 2. (a) With respect to benefit periods established  
9 on and after July 3, 1977, an individual is ineligible for waiting period  
10 or benefit rights, or extended benefit rights, if the department finds that,  
11 being totally, partially, or part-totally unemployed at the time when the  
12 work offer is effective or when the individual is directed to apply for  
13 work, the individual fails without good cause:

14 (1) to apply for available, suitable work when directed by the  
15 commissioner, the deputy, or an authorized representative of the  
16 department of workforce development or the United States  
17 training and employment service;

18 (2) to accept, at any time after the individual is notified of a  
19 separation, suitable work when found for and offered to the  
20 individual by the commissioner, the deputy, or an authorized  
21 representative of the department of workforce development or the  
22 United States training and employment service, or an employment  
23 unit; or

24 (3) to return to the individual's customary self-employment when  
25 directed by the commissioner or the deputy.

26 (b) With respect to benefit periods established on and after July 6,  
27 1980, the ineligibility shall continue for the week in which the failure  
28 occurs and until the individual earns remuneration in employment  
29 equal to or exceeding the weekly benefit amount of the individual's  
30 claim in each of eight (8) weeks. If the qualification amount has not  
31 been earned at the expiration of an individual's benefit period, the  
32 unearned amount shall be carried forward to an extended benefit period  
33 or to the benefit period of a subsequent claim.

34 (c) With respect to extended benefit periods established on and after  
35 July 5, 1981, the ineligibility shall continue for the week in which the  
36 failure occurs and until the individual earns remuneration in  
37 employment equal to or exceeding the weekly benefit amount of the  
38 individual's claim in each of four (4) weeks.

39 (d) If an individual failed to apply for or accept suitable work as  
40 outlined in this section, the maximum benefit amount of the  
41 individual's current claim, as initially determined, shall be reduced by  
42 an amount determined as follows:



(1) For the first failure to apply for or accept suitable work, the maximum benefit amount of the individual's current claim is equal to the result of:

(A) the maximum benefit amount of the individual's current claim, as initially determined; multiplied by

(B) seventy-five percent (75%);  
rounded (if not already a multiple of one dollar (\$1)) to the next higher dollar.

(2) For the second failure to apply for or accept suitable work, the maximum benefit amount of the individual's current claim is equal to the result of:

(A) the maximum benefit amount of the individual's current claim determined under subdivision (1); multiplied by

(B) eighty-five percent (85%);  
rounded (if not already a multiple of one dollar (\$1)) to the next higher dollar.

(3) For the third and any subsequent failure to apply for or accept suitable work, the maximum benefit amount of the individual's current claim is equal to the result of:

(A) the maximum benefit amount of the individual's current claim determined under subdivision (2); multiplied by

(B) ninety percent (90%);  
rounded (if not already a multiple of one dollar (\$1)) to the next higher dollar.

(e) In determining whether or not any such work is suitable for an individual, the department shall consider:

(1) the degree of risk involved to such individual's health, safety, and morals;

(2) the individual's physical fitness and prior training and experience;

(3) the individual's length of unemployment and prospects for securing local work in the individual's customary occupation; and

(4) the distance of the available work from the individual's residence.

However, work under substantially the same terms and conditions under which the individual was employed by a base-period employer, which is within the individual's prior training and experience and physical capacity to perform, shall be considered to be suitable work unless the claimant has made a bona fide change in residence which makes such offered work unsuitable to the individual because of the distance involved. During the fifth through the eighth consecutive week of claiming benefits, work is not considered unsuitable solely because



the work pays not less than ninety percent (90%) of the individual's prior weekly wage. After eight (8) consecutive weeks of claiming benefits, work is not considered unsuitable solely because the work pays not less than eighty percent (80%) of the individual's prior weekly wage. However, work is not considered suitable under this section if the work pays less than Indiana's minimum wage as determined under IC 22-2-2. For an individual who is subject to section 1(c)(8) of this chapter, the determination of suitable work for the individual must reasonably accommodate the individual's need to address the physical, psychological, legal, and other effects of domestic or family violence.

(f) Notwithstanding any other provisions of this article, no work shall be considered suitable and benefits shall not be denied under this article to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute.

(2) If the remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.

(3) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining a bona fide labor organization.

(4) If as a condition of being employed the individual would be required to discontinue training into which the individual had entered with the approval of the department.

(g) Notwithstanding subsection (e), with respect to extended benefit periods established on and after July 5, 1981, "suitable work" means any work which is within an individual's capabilities. However, if the individual furnishes evidence satisfactory to the department that the individual's prospects for obtaining work in the individual's customary occupation within a reasonably short period are good, the determination of whether any work is suitable work shall be made as provided in subsection (e).

(h) With respect to extended benefit periods established on and after July 5, 1981, no work shall be considered suitable and extended benefits shall not be denied under this article to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the gross average weekly remuneration payable to the individual for the position would not exceed the sum of:

(A) the individual's average weekly benefit amount for the individual's benefit year; plus



- 1 (B) the amount (if any) of supplemental unemployment
- 2 compensation benefits (as defined in Section 501(c)(17)(D) of
- 3 the Internal Revenue Code) payable to the individual for such
- 4 week.
- 5 (2) If the position was not offered to the individual in writing or
- 6 was not listed with the department of workforce development.
- 7 (3) If such failure would not result in a denial of compensation
- 8 under the provisions of this article to the extent that such
- 9 provisions are not inconsistent with the applicable federal law.
- 10 (4) If the position pays wages less than the higher of:
- 11 (A) the minimum wage provided by 29 U.S.C. 206(a)(1) (the
- 12 Fair Labor Standards Act of 1938), without regard to any
- 13 exemption; or
- 14 (B) the state minimum wage (IC 22-2-2).
- 15 (i) The department of workforce development shall refer individuals
- 16 eligible for extended benefits to any suitable work (as defined in
- 17 subsection (g)) to which subsection (h) would not apply.
- 18 (j) An individual is considered to have refused an offer of suitable
- 19 work under subsection (a) if an offer of work is withdrawn by an
- 20 employer after an individual:
- 21 (1) tests positive for drugs after a drug test given on behalf of the
- 22 prospective employer as a condition of an offer of employment;
- 23 or
- 24 (2) refuses, without good cause, to submit to a drug test required
- 25 by the prospective employer as a condition of an offer of
- 26 employment.
- 27 ~~(k) For purposes of this article, a drug test is not found to be positive~~
- 28 ~~unless:~~
- 29 ~~(1) a second confirmation test:~~
- 30 ~~(A) renders a positive result that has been performed by a~~
- 31 ~~SAMHSA (as defined in IC 22-10-15-3) certified laboratory~~
- 32 ~~on the same sample used for the first screen test using gas~~
- 33 ~~chromatography mass spectrometry for the purposes of~~
- 34 ~~confirming or refuting the screen test results; and~~
- 35 ~~(B) has been reviewed by a licensed physician and:~~
- 36 ~~(i) the laboratory results described in clause (A);~~
- 37 ~~(ii) the individual's medical history; and~~
- 38 ~~(iii) other relevant biomedical information;~~
- 39 ~~confirm a positive result of the drug tests; or~~
- 40 ~~(2) the individual who has submitted to the drug test has no valid~~
- 41 ~~medical reason for testing positive for the substance found in the~~
- 42 ~~drug test.~~



1        ~~(k)~~ (k) The department's records concerning the results of a drug test  
 2 described in subsection (j) may not be admitted against a defendant in  
 3 a criminal proceeding.

4        SECTION 10. IC 22-4-15-6.1, AS AMENDED BY P.L.175-2009,  
 5 SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 6 JULY 1, 2014]: Sec. 6.1. (a) Notwithstanding any other provisions of  
 7 this article, all of the individual's wage credits established prior to the  
 8 day upon which the individual was discharged for gross misconduct in  
 9 connection with work are canceled.

10        (b) As used in this section, "gross misconduct" means any of the  
 11 following committed in connection with work, as determined by the  
 12 department by a preponderance of the evidence:

13            (1) A felony.

14            (2) A Class A misdemeanor.

15            (3) Working, or reporting for work, in a state of intoxication  
 16 caused by the individual's use of alcohol or a controlled substance  
 17 (as defined in IC 35-48-1-9).

18            (4) Battery on another individual while on the employer's property  
 19 or during working hours.

20            (5) Theft or embezzlement.

21            (6) Fraud.

22        ~~(c) An employer:~~

23            ~~(1) has the burden of proving by a preponderance of the evidence~~  
 24            ~~that a discharged employee's conduct was gross misconduct; and~~

25            ~~(2) may present evidence that the employer filled or maintained~~  
 26            ~~the position or job held by the discharged employee after the~~  
 27            ~~employee's discharge.~~

28        ~~(d) Evidence that a discharged employee's conduct did not result in:~~

29            ~~(1) a prosecution for an offense; or~~

30            ~~(2) a conviction of an offense;~~

31        ~~may be presented.~~

32        ~~(e) (c)~~ (c) If evidence is presented that an action or requirement of the  
 33 employer may have caused the conduct that is the basis for the  
 34 employee's discharge, the conduct is not gross misconduct under this  
 35 section.

36        ~~(f) (d)~~ (d) Lawful conduct not otherwise prohibited by an employer is  
 37 not gross misconduct under this section.

38        SECTION 11. IC 22-4-15-8, AS AMENDED BY P.L.108-2006,  
 39 SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 40 JULY 1, 2014]: Sec. 8. Notwithstanding any other provisions of this  
 41 article, benefits otherwise payable for any week under this article shall  
 42 not be denied or reduced on account of any payment or payments the





1 claimant receives, has received, will receive, or accrues right to receive  
 2 with respect to or based upon such week under a private unemployment  
 3 benefit plan financed in whole or part by the claimant's employer or  
 4 former employer. No claim for repayment of benefits and no deduction  
 5 from benefits otherwise payable under this article shall be made under  
 6 IC 22-4-13-1(d) and IC 22-4-13-1(e) because of payments which have  
 7 been or will be made under such private unemployment benefit plans.  
 8 **However, a payment of private unemployment benefits that is**  
 9 **conditional upon the signing of a release of employment related**  
 10 **claims against the claimant's employer is severance pay and is**  
 11 **deductible income as prescribed by IC 22-4-5-2.**

12 SECTION 12. IC 22-4-17-11 IS AMENDED TO READ AS  
 13 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 11. (a) Any decision of  
 14 the review board, in the absence of appeal as provided in this section,  
 15 shall become final ~~fifteen (15)~~ **thirty (30)** days after the date the  
 16 decision is mailed to the interested parties. The review board shall mail  
 17 with the decision a notice informing the interested parties of their right  
 18 to appeal the decision to the court of appeals of Indiana. The notice  
 19 shall inform the parties that they have ~~fifteen (15)~~ **thirty (30)** days from  
 20 the date of mailing within which to file a notice of intention to appeal,  
 21 and that in order to perfect the appeal they must request the preparation  
 22 of a transcript in accordance with section 12 of this chapter.

23 (b) If the commissioner or any party adversely affected by the  
 24 decision files with the review board a notice of an intention to appeal  
 25 the decision, that action shall stay all further proceedings under or by  
 26 virtue of the review board decision for a period of thirty (30) days from  
 27 the date of the filing of the notice, and, if the appeal is perfected,  
 28 further proceedings shall be further stayed pending the final  
 29 determination of the appeal. However, if an appeal from the decision  
 30 of the review board is not perfected within the time provided for by this  
 31 chapter, no action or proceeding shall be further stayed.

32 SECTION 13. IC 22-4-25-1, AS AMENDED BY P.L.182-2009(ss),  
 33 SECTION 368, IS AMENDED TO READ AS FOLLOWS  
 34 [EFFECTIVE JULY 1, 2014]: Sec. 1. (a) There is created in the state  
 35 treasury a special fund to be known as the special employment and  
 36 training services fund. All interest on delinquent contributions and  
 37 penalties collected under this article, together with any voluntary  
 38 contributions tendered as a contribution to this fund, shall be paid into  
 39 this fund. The money shall not be expended or available for  
 40 expenditure in any manner which would permit their substitution for  
 41 (or a corresponding reduction in) federal funds which would in the  
 42 absence of said money be available to finance expenditures for the



1 administration of this article, but nothing in this section shall prevent  
 2 said money from being used as a revolving fund to cover expenditures  
 3 necessary and proper under the law for which federal funds have been  
 4 duly requested but not yet received, subject to the charging of such  
 5 expenditures against such funds when received. The money in this fund  
 6 shall be used by the board for the payment of refunds of interest on  
 7 delinquent contributions and penalties so collected, for the payment of  
 8 costs of administration which are found not to have been properly and  
 9 validly chargeable against federal grants or other funds received for or  
 10 in the employment and training services administration fund, on and  
 11 after July 1, 1945. Such money shall be available either to satisfy the  
 12 obligations incurred by the board directly, or by transfer by the board  
 13 of the required amount from the special employment and training  
 14 services fund to the employment and training services administration  
 15 fund. The board shall order the transfer of such funds or the payment  
 16 of any such obligation or expenditure and such funds shall be paid by  
 17 the treasurer of state on requisition drawn by the board directing the  
 18 auditor of state to issue the auditor's warrant therefor. Any such warrant  
 19 shall be drawn by the state auditor based upon vouchers certified by the  
 20 board or the commissioner. The money in this fund is hereby  
 21 specifically made available to replace within a reasonable time any  
 22 money received by this state pursuant to 42 U.S.C. 502, as amended,  
 23 which, because of any action or contingency, has been lost or has been  
 24 expended for purposes other than or in amounts in excess of those  
 25 approved by the bureau of employment security. The money in this  
 26 fund shall be continuously available to the board for expenditures in  
 27 accordance with the provisions of this section **and for the prevention,**  
 28 **detection, and recovery of delinquent contributions, penalties, and**  
 29 **improper benefit payments,** and shall not lapse at any time or be  
 30 transferred to any other fund, except as provided in this article. Nothing  
 31 in this section shall be construed to limit, alter, or amend the liability  
 32 of the state assumed and created by IC 22-4-28, or to change the  
 33 procedure prescribed in IC 22-4-28 for the satisfaction of such liability,  
 34 except to the extent that such liability may be satisfied by and out of the  
 35 funds of such special employment and training services fund created  
 36 by this section.

37 (b) Whenever the balance in the special employment and training  
 38 services fund exceeds eight million five hundred thousand dollars  
 39 (\$8,500,000), the board shall order payment of the amount that exceeds  
 40 eight million five hundred thousand dollars (\$8,500,000) into the  
 41 unemployment insurance benefit fund.

42 (c) Subject to the approval of the board, ~~and~~ the availability of



funds, **and subsection (e)**, on ~~July 1, 2008, and each subsequent~~ July

~~1 each year~~ the commissioner shall release:

(1) one million dollars (\$1,000,000) to the state educational institution established under IC 21-25-2-1 for training provided to participants in apprenticeship programs approved by the United States Department of Labor, Bureau of Apprenticeship and Training;

(2) four million dollars (\$4,000,000) to the state educational institution instituted and incorporated under IC 21-22-2-1 for training provided to participants in joint labor and management apprenticeship programs approved by the United States Department of Labor, Bureau of Apprenticeship and Training;

(3) two hundred fifty thousand dollars (\$250,000) for journeyman upgrade training to each of the state educational institutions described in subdivisions (1) and (2);

(4) four hundred thousand dollars (\$400,000) ~~annually~~ for training and counseling assistance:

(A) provided by Hometown Plans under 41 CFR 60-4.5; and

(B) approved by the United States Department of Labor, Bureau of Apprenticeship and Training;

to individuals who have been unemployed for at least four (4) weeks or whose annual income is less than twenty thousand dollars (\$20,000); and

(5) three hundred thousand dollars (\$300,000) ~~annually~~ for training and counseling assistance provided by the state institution established under IC 21-25-2-1 to individuals who have been unemployed for at least four (4) weeks or whose annual income is less than twenty thousand dollars (\$20,000) for the purpose of enabling those individuals to apply for admission to apprenticeship programs offered by providers approved by the United States Department of Labor, Bureau of Apprenticeship and Training.

~~(d) The funds released under subsection (c)(4) through (c)(5):~~

~~(1) shall be considered part of the amount allocated under section 2.5 of this chapter; and~~

~~(2) do not limit the amount that an entity may receive under section 2.5 of this chapter.~~

~~(e)(d)~~ Each state educational institution described in subsection (c) is entitled to keep ten percent (10%) of the funds released under subsection (c) for the payment of costs of administering the funds. On each June 30 following the release of the funds, any funds released under subsection (c) **and** not used ~~by the state educational institutions~~



1 under subsection (c) shall be returned to the special employment and  
2 training services fund.

3 (e) The funds released under subsection (c)(1) through (c)(5) are  
4 subject to performance based standards that are determined by the  
5 unemployment insurance board. The performance based standards  
6 determined by the unemployment insurance board must provide  
7 for the release of:

8 (1) seventy percent (70%) of the funds on July 1 each year  
9 based on projections for enrollment, completions, placements,  
10 and rates of retention; and

11 (2) the remaining thirty percent (30%) of the funds  
12 throughout the year as the performance criteria are met.

13 SECTION 14. IC 22-4.1-18-2, AS AMENDED BY P.L.6-2012,  
14 SECTION 156, IS AMENDED TO READ AS FOLLOWS  
15 [EFFECTIVE JULY 1, 2014]: Sec. 2. The department may grant a  
16 ~~general educational development (GED)~~ **an Indiana high school**  
17 **equivalency** diploma to an individual who achieves satisfactory high  
18 school level scores on the ~~general educational development (GED)~~  
19 **Indiana high school equivalency** test or any other properly validated  
20 test of comparable difficulty designated by the council.

21 SECTION 15. IC 22-4.1-18-4, AS ADDED BY P.L.7-2011,  
22 SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
23 JULY 1, 2014]: Sec. 4. (a) The ~~council~~ **department** shall adopt rules  
24 under IC 4-22-2 to provide for the implementation and administration  
25 of this chapter.

26 (b) The rules may include the following provisions:

27 (1) Qualifications of applicants.

28 (2) Acceptable tests.

29 (3) Acceptable test scores.

30 (4) Criteria for retesting.

31 SECTION 16. IC 22-4.1-18-5, AS ADDED BY P.L.7-2011,  
32 SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
33 JULY 1, 2014]: Sec. 5. A high school equivalency certificate or a  
34 general educational development (GED) diploma issued under  
35 IC 20-20-6 (before its repeal) is equivalent to a ~~general educational~~  
36 ~~development (GED)~~ **an Indiana high school equivalency** diploma  
37 issued under this chapter.

38 SECTION 17. IC 22-4.1-20-4, AS ADDED BY P.L.7-2011,  
39 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
40 JULY 1, 2014]: Sec. 4. (a) Money appropriated by the general  
41 assembly for adult education may be used only to reimburse an eligible  
42 provider for adult education that is provided to individuals who:



(1) need the education to master a skill that leads to:

(A) the completion of grade 8; or

(B) ~~a general educational development (GED)~~ **an Indiana high school equivalency** diploma under IC 22-4.1-18;

(2) need the education to receive high school credit to obtain a high school diploma; or

(3) have graduated from high school (or received a high school equivalency certificate, ~~or~~ a general educational development (GED) diploma, **or an Indiana high school equivalency diploma**), but who demonstrate basic skill deficiencies in mathematics or English/language arts.

For purposes of reimbursement under this section, the eligible provider may not count an individual who is also enrolled in a school corporation's kindergarten through grade 12 educational program. An individual described in subdivision (3) may be counted for reimbursement by the eligible provider only for classes taken in mathematics and English/language arts.

(b) The council shall provide for reimbursement to an eligible provider under this section for instructor salaries and administrative and support costs. However, the council may not allocate more than fifteen percent (15%) of the total appropriation under subsection (a) for administrative and support costs.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Employment, Labor and Pensions, to which was referred House Bill 1346, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

(Reference is to HB 1346 as introduced.)

Committee Vote: Yeas 7, Nays 4

Representative Gutwein

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1346 be amended to read as follows:

Page 18, line 30, delete "(c)(1) through (c)(5)" and insert "**(c)(4) and (c)(5)**".

Page 18, line 32, delete "department." and insert: "**unemployment insurance board.**".

(Reference is to HB 1346 as printed January 21, 2014.)

LEONARD

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COMMITTEE REPORT

Madam President: The Senate Committee on Pensions and Labor, to which was referred House Bill No. 1346, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 4, delete line 25, begin a new line blocked left and insert: "**upon the signing of a release of employment related claims against the claimant's employer.**".

Page 15, between lines 22 and 23, begin a new paragraph and insert: "SECTION 11. IC 22-4-15-6.1, AS AMENDED BY P.L.175-2009, SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 6.1. (a) Notwithstanding any other provisions of this article, all of the individual's wage credits established prior to the day upon which the individual was discharged for gross misconduct in connection with work are canceled.

**EH 1346—LS 7024/DI 102**



(b) As used in this section, "gross misconduct" means any of the following committed in connection with work, as determined by the department by a preponderance of the evidence:

- (1) A felony.
- (2) A Class A misdemeanor.
- (3) Working, or reporting for work, in a state of intoxication caused by the individual's use of alcohol or a controlled substance (as defined in IC 35-48-1-9).
- (4) Battery on another individual while on the employer's property or during working hours.
- (5) Theft or embezzlement.
- (6) Fraud.

~~(c) An employer:~~

- ~~(1) has the burden of proving by a preponderance of the evidence that a discharged employee's conduct was gross misconduct; and~~
- ~~(2) may present evidence that the employer filled or maintained the position or job held by the discharged employee after the employee's discharge.~~

~~(d) Evidence that a discharged employee's conduct did not result in:~~

- ~~(1) a prosecution for an offense; or~~
- ~~(2) a conviction of an offense;~~

~~may be presented.~~

~~(e) (c)~~ If evidence is presented that an action or requirement of the employer may have caused the conduct that is the basis for the employee's discharge, the conduct is not gross misconduct under this section.

~~(f) (d)~~ Lawful conduct not otherwise prohibited by an employer is not gross misconduct under this section."

Page 15, line 35, after "payment" insert **"of private unemployment benefits"**.

Page 18, line 30, delete "(c)(4) and (c)(5)" and insert **"(c)(1) through (c)(5)"**.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1346 as reprinted January 28, 2014.)

BOOTS, Chairperson

Committee Vote: Yeas 7, Nays 1.



SENATE MOTION

Madam President: I move that Engrossed House Bill 1346 be amended to read as follows:

Page 3, delete lines 9 through 42.

Page 4, delete lines 1 through 28.

Renumber all SECTIONS consecutively.

(Reference is to EHB 1346 as printed February 28, 2014.)

BOOTS

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SENATE MOTION

Madam President: I move that Engrossed House Bill 1346 be amended to read as follows:

Page 19, line 25, after "board." insert "**The performance based standards determined by the unemployment insurance board must provide for the release of:**

**(1) seventy percent (70%) of the funds on July 1 each year based on projections for enrollment, completions, placements, and rates of retention; and**

**(2) the remaining thirty percent (30%) of the funds throughout the year as the performance criteria are met."**

(Reference is to EHB 1346 as printed February 28, 2014.)

BOOTS

